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MANUEL FRANCO,

No. C 10-04768 WHA

10 Plaintiff,

11 v.

12 CITY AND COUNTY OF SAN FRANCISCO, San Francisco
13 Chiefs of Police HEATHER FONG and GEORGE GASCON,
14 SANDRA C. JACQUEZ FLORES, CHRISTOPHER
15 MERINDINO, BRIAN GINN, MARIO MOLINA, JOSEPH
16 L. FORD, DANIEL H. BUTLER, ELIZABETH A.
17 WICKMAN, KENNETH KARCH, EMJOHN V. PASCUA,
18 MICHAEL J. KLINKE, JOHN S. POSUSNEY, DAVID S.
19 PARRELL, TSENG CHOW, AMY POLING, GEORGE
20 DOBBERSTEIN, CHRISTINE LASCALZO, KRISTINE
21 CARTER, FRANCISCO MARTINEZ, NICOLAS T. FORST,
22 MARK HAMMELL, SANG JUN, GREGORY A. JENKINS,
23 CHRISTINE LOSCALZO, BEN HORTON, SCOTT LAU,
24 JOHN CAGNEY, TOM NOOLAN, and DEFENDANT
25 DOES 1-40,

**ORDER RE MOTION TO
EXTEND TIME TO FILE
MOTION FOR LEAVE
TO FILE AN AMENDED
COMPLAINT**

26 Defendants.

27 /

28 This civil action to recover damages arising from the indictment, arrest, and criminal
prosecution of plaintiff Manuel Franco was filed October 21, 2010. Judge Charles R. Breyer
stayed the action pending resolution of the related criminal proceedings in *United States of
America v. Franco*, No. 08-730 WHA (Dkt. No. 45). The case was reassigned to the
undersigned judge on March 7, 2011. On February 16, 2012, the jury returned its verdict in
United States of America v. Franco. By order dated February 24, 2012, the stay in this action
was lifted.

1 All defendants, except for Sang Jun, alleged to be a special FBI agent, moved to dismiss.
2 The motion to dismiss was granted. The *Heck*-barred claims were dismissed without prejudice.
3 The RICO claim, the only claim not barred by *Heck*, was dismissed with leave to file a motion
4 for leave to file an amended complaint. The order stated (Dkt. No. 77 at 15):

5 Plaintiff may seek leave to amend only as to the RICO claim and
6 will have 14-calendar days from the date of this order to file a
7 motion, noticed on the normal 35-day track, for leave to file an
8 amended complaint. A proposed amended complaint must be
appended to the motion. The motion should clearly explain how
the amendment to the complaint cures the deficiencies identified
herein.

9 The dismissal order was filed June 1, 2012. Plaintiff's motion for leave to file an
10 amended complaint was due June 15. None was filed. On June 26, 2012, plaintiff filed a motion
11 to extend the time to file the motion for leave to amend, appending a motion for leave to amend,
12 the proposed amended complaint, and a declaration explaining plaintiff's failure to file a timely
13 motion. The declaration states that plaintiff's counsel's "paralegal was out of the office and
14 suffered a family emergency for two weeks preceding the required filing on June 15th," and that
15 plaintiff's counsel "was in large part working from home and battling an illness the week of June
16 15, 2012" (Green Decl. ¶¶ 1, 3). Apparently, "[d]ue to a typographical error in the calendaring
17 system, the document that was required to be filed [sic] was misidentified" (Br. 2).

18 Because the amended complaint was timely filed, there will likely be little, if any,
19 prejudice to defendants, by granting the requested relief. Plaintiff will not be penalized due to
20 his counsel's failure to comply with a Court order given that, according to plaintiff's counsel's
21 declaration, her failure to comply was due to illness and her paralegal having suffered a family
22 emergency. Thus, the motion to extend the time to file a motion for leave to amend the
23 complaint is **GRANTED**. The motion must be filed by **5 P.M. TODAY, JUNE 26, 2012**.

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25 **IT IS SO ORDERED.**

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27 Dated: June 26, 2012.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE